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CONTENTS

REPORTS

NOTES OF THE WEEK

Insulting Behaviour

A private member's Bill to increase the penalty provided by s. 54 of the Metropolitan Police Act, 1839, for the offence of using insulting, threatening or abusive words or behaviour likely to cause a breach of the peace, has received wide support. A penalty of 40*s.* is certainly inadequate to meet some of the worst cases of disorder and hooliganism in the streets, often committed by young people receiving high wages.

It has been suggested that sufficient provision is already made in s. 5 of the Public Order Act, 1936, which prescribes a maximum penalty of three months' imprisonment or a fine of £50 for such an offence or both such imprisonment and fine.

Doubts may have been entertained, on the question whether the Act should be applied to cases hitherto dealt with under the Metropolitan Police Act, 1839. As was stated by the Lord Chief Justice in *Wilson* v. *Skeock* (1949) 113 J.P. 294, the Public Order Act, 1936, as the title of the Act shows, was passed "to prohibit the wearing of uniforms in connexion with political objects and the maintenance by private persons of associations of military or similar character; and to make further provision for the preservation of public order on the occasion of public processions and meetings in public places." It is true that Lord Goddard used words in his judgment which indicated that s. 5 might in some circumstances be applied to cases of insulting words and behaviour such as are commonly dealt with under the Act of 1839. However, since most of these offences are dealt with in London under the Act of 1839, an amendment of that Act is no doubt desirable.

Alcoholism and Drug Addiction

A conference on alcoholism and drug addiction was recently held, which is said to be the first ever held in this country. It was organized by the Institute for the Study and Treatment of Delinquency and was attended by 25 psychiatrists. The various methods of treatment at present available were discussed. It was felt that certain definite impressions would result from the addresses and discussions. Chief among them was the emphasis on alcoholism as a disease and the sharp distinction between the heavy drinker and the true alcoholic. The heavy drinker, it was said, could reduce his consumption, but for the alcoholic this was practically impossible—it must be all or nothing. There was also an astonishing lack both of information about the prevalence of this disease and of facilities for treating it. Until recently there was only one special unit for alcoholics in the hospital system, and even if an adequate number of clinics could be set up, it was suggested, there were very few doctors at present who would be qualified to run them.

The conference was convinced that alcoholics are mainly people who can be cured and are worth treating.

Pocket-money

The chairman of the Bristol juvenile court was reported in the *Western Daily Press* as advising a mother to give her boy regular pocket-money, however small. This, said the chairman, was more effective than giving the boy money when he asked for it. The boy had pleaded guilty to stealing lead because he wanted some money. The mother said she had had five children and had never given any of them pocket-money, although she had never prevented them from going anywhere.

We agree with the chairman's advice. If a child is given a fixed sum every week, and not too large a sum, and told that this is all he can expect for sweets and other little things he wants, perhaps to include a visit to the pictures, he will learn the value of money and how to get the most out of it. He will not imagine he can get anything he wants at any time simply by asking for it, and he may even learn how to save up for something special. Pocket-money is given to children in the care of local authorities and to those in approved schools, and they receive some guidance, no doubt, on the best ways of making use of it.

It is a mistake to make the weekly allowance too lavish, as some parents with high wages are apt to do. This only encourages extravagant habits and tastes, and the consequence sometimes

is that a child who has run through his money steals in order to obtain more. Either to deny pocket-money or to be over lavish with it is a mistake.

London as the Guinea-pig

The Road Traffic Act, 1956, s. 4 (5) provides that before an order is made introducing a 40 miles an hour speed limit outside the London Traffic Area the Minister of Transport must report to each House of Parliament the views of the Departmental Road Safety Committee on the results of the experimental introduction of a 40 miles per hour limit in that area. Drivers in the London Traffic Area are now to be made the subject of such an experiment, to have one more responsibility added to the many which they have already to bear. The Traffic Signs (40 m.p.h. Speed Limit) Regulations, 1958 (S.I. 1958 No. 302) and the accompanying Directions (S.I. 1958 No. 303) came into force on March 15, 1958, and it is announced in a Ministry press notice that some 50 lengths of main road, totalling 83 miles, will come under the new limit. Sixty-two of these 83 have at present no speed limit. On the remaining 21 there has been a limit of 30 miles per hour. Presumably the police will have to devote to enforcing these new limits time which at present is given to other duties, and the magistrates' courts will find their lists increased in consequence. On the wisdom of introducing this new limit opinions differ, and we do not think that it is a matter on which this journal ought to take sides. We do hope, however, that the experiment will be watched quite impartially, and that it will not be extended elsewhere, or continued in the London Traffic Area, unless the proved results justify it. Restrictions which do not amply justify their existence are irksome and may do harm out of all proportion to the good they are intended to promote, but it must be recognized that the object of this experiment is to reduce road accidents and if there is evidence forthcoming that it has this effect drivers should welcome it.

Advice to Pedestrians

The February number of the Essex County Constabulary Road Safety Office Accident Bulletin devotes its front page to "Pedestrians Crossing." Referring to the fact that a pedestrian using an uncontrolled crossing has precedence over any vehicle if he is on the crossing before any part of the vehicle has come on to it, the bulletin notes that this is a privilege not to be abused. It continues, "it is common sense to look before stepping on to the crossing and to refrain from stepping on to it if traffic is so close that it would be required to halt suddenly to avoid an accident."

The next reference is to the fact that an island in the middle of a crossing divides that crossing into two separate crossings, and that the Highway Code advises pedestrians to stop on the refuge and to look to make sure what the traffic approaching the second half of the crossing is doing. The note concludes "Careful use by pedestrians of crossings must reduce accidents, but indiscriminate use may well increase them. Remember you have responsibilities as well as rights."

Experience on the roads does show that many pedestrians are most careful and considerate in their use of crossings, and it is a great pity that a minority act foolishly and without consideration as by dashing at top speed, and from one side, on to a crossing just as traffic which has been halted is starting to move again. Equally is it a pity that some motorists will not stop, although a number of pedestrians have congregated ready to cross, unless one or more of them take the risk of walking out on to the crossing. What is wanted in this matter, as in so many others, is give and take and care and courtesy on both sides.

Causing Death by Dangerous Driving

It might have been thought when s. 8 of the Road Traffic Act, 1956, was passed that it would apply in every case in which a person was killed in a road traffic accident and it was proved that the driver of a vehicle involved in that accident was found to have been driving dangerously. Experience has shown that this is not so.

It is to be noted that the wording of s. 8, so far as it relates to the manner of the driving, is the same as that in s. 11 of the Road Traffic Act, 1930. The additional factor involved in s. 8 is that it must be proved that the death was caused by the dangerous driving. In the *Liverpool Daily Post* of March 8, 1958, is a report of a case in which a driver was found not guilty of causing the death of the occupant of another vehicle by driving in a manner dangerous to the public but was found guilty, we assume on the same facts, of dangerous driving and was sentenced to one month's imprisonment and disqualified for driving for 10 years. The defendant was driving a motor tanker and the deceased woman was driving her car in the opposite direction. It is stated in the report that the accident occurred when the defendant was overtaking a lorry and the deceased woman was confronted by the two vehicles which occupied the whole road. Three other people were killed in the crash, the deceased woman's two children and their 19 year old nursemaid.

The learned Judge said that some sentence of imprisonment must be passed to mark the gravity of a very bad and dangerous piece of driving.

The case of *R.* v. *Andrews* [1937] 26 Cr. App. R. 34 is of interest in this connexion. It was in that case that the House of Lords decided that a person may drive a motor vehicle at a speed or in a manner dangerous to the public within the meaning of s. 11 of the Road Traffic Act, 1930, and cause death thereby and yet not be guilty of manslaughter. It seems likely that s. 8 of the Act of 1956 was intended to meet the difficulty of defining the degree of criminal negligence necessary to justify a verdict of manslaughter by creating the lesser offence of causing death by dangerous driving. It may be that sooner or later the Court of Criminal Appeal will have an opportunity to deal with the position under s. 8.

The Cost of Road Improvements

Figures are put forward from time to time giving estimates of the cost to the nation of delays due to the hold-ups and other difficulties which are caused by the congestion on our inadequate roads and it is urged that we cannot afford the losses which result from this. We do not know to what extent it is possible to estimate these losses with any reasonable degree of accuracy, but probably no one will dispute that they are considerable. But they do not show as positive figures in any particular budget, whereas it is only too easy to ascertain exactly what road improvements cost and it is not always clear that those who have to find the money for these can be sure that they will derive the benefits from the money so spent. We are prompted to these reflections by reading in *The Birmingham Post* of March 8, the estimated cost of certain road improvements proposed for Birmingham. The first figure is a mere £20,900 on new traffic light systems to bring immediate relief to two of the city's worst traffic black spots. Then there is mention of a £140,000 scheme for the construction of a fly-over crossing to take Bristol Road traffic over Priory Road and £59,000 for a detailed

scheme for the *first stage* of improvements of the junction of Six Ways, Aston. We are not in any way criticising these proposed expenditures, but are merely using the report of them to illustrate what large sums of money are involved in each and every improvement which is in any way of a radical nature. It must be extremely difficult for those who have the responsibility for deciding whether such expenditure is justifiable, having regard to the many other demands for expenditure with which they have to deal. It is clear, however, that the life of a highly organized society such as ours does depend to a considerable extent on efficient road transport and that efficient road transport is only possible on roads which are reasonably adequate to the traffic they have to carry. We do not want to be driven to devising a system of rationing for the roads, excluding from them all other than those who are accepted as being essential users.

Juvenile Charged with Adult

A newspaper report of a case in which two young men and a juvenile were charged before a magistrates' court stated that the juvenile had elected to be dealt with in the adult court with the other two defendants. They were accused of wilful damage and stealing. The only election to which the juvenile would be entitled (assuming he was a young person) would be to choose between trial by jury or, if the court thought fit, summary trial in the adult court. He had no right of election as between the adult court and the juvenile court. Section 46 of the Children and Young Persons Act, 1933, provides that where a juvenile is jointly charged with an adult the charge shall be heard in the adult court, but that court may, under s. 56, if the juvenile is found guilty, remit the case to a juvenile court for disposal. Section 46 makes a distinction between joint charges and cases in which a juvenile is charged with an offence and an adult is charged with aiding and abetting, etc., and provides that in such cases the juvenile may be dealt with in the adult court, but does not say "shall."

The newspaper in question observes a practice common among responsible journals and gives no name or address of the juvenile although to do so would not be unlawful.

Suspicion of Adultery and the Question of Condonation

Condonation is the reinstatement in his or her former marital position of a spouse who has committed a matrimonial wrong of which all material facts are known to the other spouse with the intention of forgiving and remitting the wrong, on condition that there shall be no further offence.

The importance of the word "known" was illustrated by the decision in *Burch* v. *Burch* (*The Times*, March 11), in which Sachs, J., granted the husband a decree on the ground of his wife's adultery, holding that the fact that the husband had lived with his wife and had intercourse with her for several years after he had become suspicious that she had committed adultery, did not amount to condonation.

In the course of his judgment, in which he reviewed the facts, the learned Judge said that a conclusion based on intuition, delusion, jealous obsession or any other method than reasonable deduction from ascertained facts, did not constitute knowledge. The husband was not aware of any facts on which a reasonable man could ground a belief in his wife's adultery. The husband had no knowledge until his wife confessed and therefore she could not assert that there was condonation before that date, unless it was one of those cases in which the husband said in effect that whether it was true or false he cared not and would take her back.

Sexual Abnormality as Cruelty

To constitute matrimonial cruelty, conduct must be of such a kind as to have caused danger to life, limb or health (bodily or mental), or as to give rise to a reasonable apprehension of such danger. Intentional acts may amount to cruelty, though there is no intent to be cruel, *see Jamieson* v. *Jamieson* [1952] 1 All E.R. 875; 881 H.L. and other cases cited in *Rayden on Divorce*, 7th edn. p. 114.

The facts in *Williams* v. *Williams* (*The Times*, March 15), were unusual and illustrated the many forms that cruelty may take, quite apart from physical violence.

The wife alleged that her husband's behaviour in persistently expressing his desire to become a woman, dressing up in women's clothes and putting make-up on his face, causing her to be humiliated and distressed, had affected her health. In the course of his judgment Collingwood, J., referred to a long and serious discussion in which the wife impressed upon the husband the way in which his conduct affected her and that she could bear it no longer. In consequence of what he told her she was distressed and revolted and told him she could never be a wife to him again. He went on wearing women's garments in the evening and women's underwear in the daytime. He used to talk of saving enough money to have an operation changing him into a woman. Finally the wife left him. The learned Judge referred to the husband's denial and explanation, which he could not accept, and found that the husband had persisted in a long course of conduct despite the distress which to his knowledge, it caused to his wife. He must have known it would ultimately have a serious effect upon her health. He granted the wife a decree and dismissed the husband's petition on the ground of adultery, holding that her admitted adultery had been encouraged by the husband.

Films and Crime

According to the *Western Morning News*, an 11 year old boy who appeared in a juvenile court, found guilty of two charges of breaking and entering and stealing, and asking for six similar cases to be taken into consideration, told a detective, "I broke the window to get in because that's the way they do it on television."

About a week later the press and wireless gave prominence to a statement made at a meeting of the Association of Cinematograph, Television and Allied Technicians that nine out of 12 imported American films were based on violence. The speaker said that in one week 18 people were done to death, 23 attacked and wounded with a blunt instrument, 11 kicked in the stomach, all between the hours of 5 *p.m.* and 6 *p.m.* on children's television.

It is often said that people are too ready to blame the cinema and the wireless for being the cause of juvenile crime, but at all events there is evidence that it must be held responsible for some of it. There is a great deal of excellent fare for children of all ages in the programmes of cinemas and of television and sound radio, but there is obviously a good deal, even in programmes avowedly provided for children that is unsuitable and harmful. Parents ought at least to be able to rely on the suitability of programmes intended for children to be harmless and amusing or instructive or both. As to other programmes, parents should see to it that their children are encouraged to see and hear what is suited to their age and discouraged from seeing and hearing stories of brutality, vice and sordid crime. But parents do not always act wisely in this matter, and it is a pity

that so much prominence is given nowadays in many films and on the air to crime stories and deeds of gangsters and hooligans. In particular, those responsible for broadcasting should examine their methods and resolve to dispense less of this kind of thing, especially in programmes for the young.

Rates After 1958–59

There are 1,355 county districts of different types — 319 non-county boroughs, 563 urban districts and 473 rural districts. They have now made their rates and in general there are increases of a few pence over the 1957–58 figures. But of course the pattern of rates in all these authorities is largely governed by the precepts issued by 62 county councils: an examination of county budget figures should therefore help a prophet anxious to be accurate in comment on the probable trends of 1959–60 and beyond.

It must be said at once that the figures contain no evidence that the continuous rise in rates will be halted. We imagine that this fact will not surprise those familiar with local government services and the analysis of their cost.

County precepts issued show considerable variations as compared with 1957–58, but it is only in a few cases that there are rises of over 1*s*. On the other hand 10 counties have made no change and six have reduced their levies. the largest group of 22 have raised poundages required by not more than 6*d*., an increase on average of around three *per cent*.

This situation has only been achieved, however, by drawing on balances in varying degrees. There is, of course, nothing inherently wrong in such a procedure, particularly when those balances had in a great many counties been swollen well beyond estimates due to penny rate products of previous years exceeding understandably cautious county district estimates. Such bonuses, accruing as a result of the general revaluation of rateable properties, are unlikely to be repeated however—at least in the same measure.

There is also the growth of expenditure to be considered. We have looked at a sample of 11 county budgets covering various types of county. Gross estimated expenditure has increased by between five and 19 *per cent*., with seven authorities recording increases of between eight and 11 *per cent*. It is perhaps more useful, however, to look at net expenditure falling upon the rates and here the percentage increases are rather more on average than those on the gross figures.

Thus even if the cost of services did not rise, unless rate income has been seriously underestimated, a rise in precepts is inevitable in future years. But the cost of services continues to rise, and of no service is this more true than of education which requires more money than all other county services put together. Fictitious economies, such as a lowering of the limits of capital expenditure which can be charged to revenue will not reverse or halt this trend. The substantial pay increases given to teachers by the Burnham Awards continue, the cost of women teachers continues to rise as their pay each year more nearly reaches equality with their male colleagues, and new schools and colleges continue to be built.

The motoring public is crying out for new roads and improvements of old ones: some of the cost of such works must fall upon the rates.

It is tolerably clear therefore that ratepayers must anticipate increased imposts in the future, unless they are in those favoured areas which may secure substantial relief from the new rate deficiency grant.

Permission to Develop Where no Sewer

It has been settled law for many years that a local authority cannot, when exercising powers given by the Public Health Act, 1936, reject plans for a building which comply with its byelaws made under that Act and with certain statutory provisions, such as those in s. 37 of the Act. These statutory powers of rejection have been slightly extended by other Acts, in matters outside our present purview, but the proposition we have stated remains true. Cases are noticed by the Departmental Committee on Building Byelaws (Cmd. 9213 of 1918), and *Lumley's* notes, which established that proposition in relation to means of access; safety of persons resorting to the building, and its means of drainage, amongst other matters. A more recent case is *Chesterton Rural District Council* v. *Thompson* [1947] 1 All E.R. 666; 111 J.P. 127, which applied the same principle to the plans of a building which satisfied s. 37 of the Act of 1936, as well as all other positive requirements, but would have involved discharging sewage into a place of reception which in its turn was not provided with satisfactory means of carrying the effluent away. The decision has been criticized, as was to be expected, but it is in line with precedents such as *R.* v. *Bexhill-on-Sea Corporation, ex parte Cornell* (1911) 75 J.P. 385 going back before the Act of 1936, and the Act is so drawn as to make it plain that the law was not being altered.

Are local authorities powerless to prevent such a result? Must they wait and see what happens, and then, after the building has been erected (or it may be a group of buildings) take such remedial action as is possible? One difficulty about remedial action afterwards is that the building or buildings may have been sold. The person who laid the drains and arranged the place of reception of the effluent may have parted with his interest in the property, and the only persons who can, individually or jointly, be said to be causing a nuisance or injury to health are innocent occupiers, who may have bought their houses believing, as was natural, that the drainage had been properly arranged. Some of the mischiefs arising in some places have been due to the obsession of the town dweller going to live in the country, with a water-carriage system leading to a sewer.

We lately had a case before us where 15 bungalows had been erected and connected to a private sewer. The purchasers had no reason to suppose that anything was wrong, but the private sewer had no proper outlet. There were complications involving other landowners, with which we are not here concerned; the only step the local authority felt itself in a position to take was to serve abatement notices on the 15 householders. Not only was this unfair to them; it was an unsatisfactory means of putting right a state of affairs which never ought to have come into existence.

What could have been done? It must be granted that the plans of the 15 houses could not have been rejected upon the ground that there would not be an adequate outlet for the private sewer into which the houses would drain. Equally, if a group of houses is to drain into a public sewer, the plans cannot be rejected on the ground that exercise by the owner of each house of the statutory right given to him by s. 34 of the Act of 1936 would overload the council's sewer. In such a case, is there any other means of stopping development before building has begun? It seems to us that planning would be almost meaningless if, in such a case, the planning authority were powerless to prevent the mischief at the outset, and we have expressed the view at 116 J.P.N. 446, and again at 122 J.P.N. 64.

that it is not *ultra vires* the planning authority to refuse planning permission on such a ground. Whether this is reasonable must be decided in each case. We take it that the planning authority would be wrong to use its power as a means of letting the public health authority off its duty under s. 14 of the Act of 1936. The Minister of Housing and Local Government has acted upon our view of *vires*, dismissing some appeals and allowing others on the facts, in a group of decisions published in his bulletin of selected appeal decisions (No. 12), issued in January, 1957.

For what it is worth, we may refer also to s. 20 of the Town and Country Planning Act, 1954. This is a compensation provision, of which one part speaks of development which is premature by reason of deficiencies in sewerage likely to be made good within a time that can be foreseen. The section does not give guidance upon the manner of dealing with applications for planning permission under the Act of 1947, but it does support the thesis that refusal of planning permission is *intra vires*, where the ground of refusal is that there are not adequate facilities for drainage by way of a sewer, where drainage to a sewer is the proper method.

THE SHOCKING STATE OF WEIGHTS AND MEASURES LEGISLATION

[CONTRIBUTED]

It is understandable that each of us, according to his experience and favour, should each year find some deficiency in the current Government's plans for new legislation as expressed in the Gracious Speech of the Queen. Last year was no exception. More than one comment has been made on the absence of action upon the Gowers and the Wolfenden Reports, but none, so far as we know, has deplored the lack of any proposal to amend the weights and measures law in implementation of the Hodgson Report of May, 1951. It is time that the ordinary person was aware of the grave dis-service being perpetrated by the failure to improve and extend the scope of weights and measures legislation; a vital control of internal trade and commerce. The Board of Trade, acting through its Standard Weights and Measures Department, has a debatable record as the guardian of this essential service. The main fabric of the legislation controlling units of weight and measure and the accuracy of weighing and measuring apparatus used in trade is the Weights and Measures Act, 1878. In 1889 an Act was passed which made amendments to the Act of 1878 on the one hand, and on the other provided for control of the sale of coal. The next Act of moment was that of 1904 which further amended the principal Act and, in particular, provided for the making of general regulations by the Board of Trade with respect to the verification and stamping of weighing and measuring apparatus, the tests to be applied, the errors to be allowed and the removal of the stamp from apparatus found in error (a power extended in 1926).

Twenty-two years later the Sale of Food (Weights and Measures) Act, 1926, widened the control to prohibit short weight, measure or number in foodstuffs, but that Act, except in relation to pre-packed foods, only extends to retail dealings. In 1936 an Act was passed to control dealings in sand and ballast.

This corpus of legislation is to a large degree inadequate and outmoded, and the degree of its deficiency is illustrated by proposals for reform detailed in the Hodgson Report and indicated later in this article. The truth is that during the past 80 years, and particularly during the past 30 years, there has been a revolution in weights and measures equipment and in trade practices in the sale of goods. Whereas legislation should have kept pace with the changes it has shamefully remained static. Nor does the complaint lie entirely with the statute book. The regulation-making power entrusted to the Board of Trade by the Acts of 1904 and 1926 was an instrument bestowed for the express purpose of keeping control of weighing and measuring apparatus as it developed and changed or was invented; it has not been used to this end. The Weights and Measures Regulations, 1907, the first and main exercise of the power, are lengthy and comprehensive and were adequate to their day. Unfortunately they remain the directives under which inspectors verify and inspect apparatus for or in trade use now, 54 years afterwards; years which have seen fantastic development in the design and use of weighing and measuring apparatus. Apart from these regulations the only exercise of the power in this connexion of any significance has been Regulations for Leather Measuring Instruments (1921), Petrol Pumps (1929), Sand and Ballast Apparatus (1938) and Egg-grading Machines (1942). The result is an inadequacy and absence of control in an ever growing field of apparatus. The Regulations of 1907 are defective in such matters as the tests to be applied, in the errors to be permitted and in the apparatus to which they apply. Counting machines, fabric measuring instruments, churn filling instruments, bulk liquid measuring instruments, volumetric measuring appliances all go uncontrolled.

There is thus a state of affairs where legislation has to an alarming degree failed to be exercised in a field which, beyond controversy, it must be up-to-date. There is 50 years of inertia and inaction to be dealt with and paid for, paid for because unless legislation is kept in pace, or indeed ahead, of development, the cost of bringing matters under control when unsuitable apparatus or bad practices come into widespread use is enormous. The whole problem becomes unnecessarily and improperly of great difficulty.

Inspectors of weights and measures have with great ingenuity and great loyalty for many years done their best with the ancient and outmoded tools of authority with which they have been provided, but it has become more and more like trying to stop an elephant with a pea-shooter.

By way of illustrating what must be done it is well to call to mind the outlines of the Hodgson recommendations. This report was unanimous and, except in one instance (that the Imperial system of weights and measures should eventually be abolished in favour of the Metric system), generally accepted as right and modest. We do not believe that any reasonable person would think other than that the proposals were the minimum necessary and were of vital importance. As to weighing and measuring equipment, the Committee proposed that the existing regulations should be extended to cover bulk liquid measuring instruments (*e.g.*, on tank wagons for fuel oils, milk, beer and numerous other commodities), certain counting machines, volumetric measuring appliances, personal weighing machines for the use of which a charge

is made, and, to a limited extent, water meters. All trading Government departments should, it was suggested, agree to use only stamped apparatus and to allow periodical inspection. A proposal was also made that milk bottles should be made to standard specification by manufacturers licensed by the Board of Trade. As to short weight and measure, the Committee advocated considerable expansion in this field of protecting the purchaser, which at present is virtually confined to retail dealings in coal, food, sand and ballast (with some protection as regards wholesale dealings in pre-packed food). First, it was recommended that the provision which makes it an offence to sell food deficient in quantity should extend to *all* articles sold by weight, measure or number. Further, misrepresentation of quantity in respect of any goods in possession for sale or exposed or offered for sale should be an offence. Further, it was recommended that in respect of a much wider range of goods (including non-food articles) it should be obligatory for sales to be in terms of weight and, in certain cases, only in prescribed quantities. New articles to come under this control include various specific preserves, condiments, herbs, custards, Christmas puddings, cereal foods, edible pastes, cotton wool, lint, starch, washing soda, borax, animal and bird foods, and fertilizers. Obligation to declare the number sold upon the container when the article is pre-packed was recommended for a number of articles including nutmegs, rennet tablets, saccharin tablets, sweetening tablets and matches. In addition it was recommended that a group of non-food domestic articles, including disinfectants, germicides, ammonia, paint and rust removers, paraffin, inks, candles and seeds should be sold only by weight or measure. It was recommended that the regulations requiring pre-packed food to bear a true statement of minimum quantity should be extended to cover certain non-foods. Special consideration was given to certain other specific articles; the present provisions relating to bread, milk and meat (re-defined to include rabbits and poultry) were to be extended to all sales of fresh fish (with the exception of first sales on landing, of herring by the cran and of all shell fish); chocolate and sugar confectionery and a number of the smaller fruits and vegetables should require to be sold by net weight only. With regard to sales of alcoholic liquor, proposals were made to require all draft sales of wines and spirits (except sparkling wines, liqueurs and cocktails) to be by measure. Paints and distempers should be sold only by net weight in some cases, by net measure in others. Knitting wool, thread, tape and elastic by net weight or length only. Tobacco and tobacco goods by weight or number only. Similar obligations were to be made in respect of sales of liquid fuel and lubricating oil (by measure or weight) and *all* solid fuel (by weight, exceptionally by measure). Control over sales of sand and ballast were, it was proposed, to be extended to cover agricultural salt and chalk, lime, earth, chippings and fertilizers sold in bulk. In general, it was recommended that a requirement to sell a particular commodity by weight, measure or number *only* should apply to transactions at all stages of distribution, wholesale as well as retail.

Further recommendations were made regarding enforcement including a revision of the maximum penalties for offences, which in many cases remain at £5 as set down in 1878. The administrative proposals in the report, which include a drastic reduction in the number of administration units by the elimination of the small ones, it is not necessary to mention now.

There are three needs which we believe are as urgent as any needing Government attention in the sphere of social administration. First, new legislation bringing up to date and greatly extending the field of weights and measures control; second, new general regulations under the Acts of 1904 and 1926 which will retrieve the indolence of 50 years, and new regulations which will, as necessary, give effect to the new fields into which legislation will take the administration; third, a complete re-orientation of the Weights and Measures Standards Department of the Board of Trade so that it continuously operates regulation-making powers to control and keep abreast of development. A factor such as the development of quick-frozen foods, for example, can, in two years, expand with such rapidity that the most alert and instant control must be prepared to deal with it.

When these three things are done the tests of adequacy and uniformity of control will be met. No more will the inspector be impotent to act as so often he now is; no more will local authorities feel impelled to tinker with the statute fabric by seeking improvements in minor matters by local Acts, and for the first time in at least 40 years this great service for the people will be itself again.

ADOPTION ACT, 1950: CONSENT OF A PERSON LIABLE TO CONTRIBUTE

In the case of *Re D. (an infant)* [1958] 1 All E.R. 427, the facts, briefly, were that an adoption order was made in a county court in respect of an infant whose mother had been murdered by his putative father. At the time of the mother's death there was in force an affiliation order. The putative father opposed the making of the adoption order on two grounds. First, that he was "a person liable by virtue of an order to contribute to the maintenance of the infant" (Adoption Act, 1950, s. 2 (4)); and secondly that as such a person his consent to the adoption was not unreasonably withheld.

The Court of Appeal assumed that he was a person whose consent was required and held that it was unreasonably withheld. The Court, however, deliberately avoided expressing an opinion as to whether the death of the infant's mother caused the putative father to cease to be a person liable to contribute under an order.

The purpose of this note is to pursue that point.

It is necessary to go for guidance to the Bastardy Acts. An affiliation order is an order for payment by the putative father of a weekly sum of money to the mother of a bastard child or any person who may be appointed to have the custody of the child, for the maintenance and education of the child (s. 4, Bastardy Laws Amendment Act, 1872). Further, "all money payable under any order as aforesaid shall be due and payable to the mother of the bastard child in respect of such time and so long as she lives . . ." (s. 5, Poor Law Amendment Act, 1844). It is therefore clear that, if nothing else intervenes, the death of the mother will cause the affiliation order to cease. In such a case, the putative father would appear to be no longer "a person liable to contribute under an order." It follows that he would not be a person whose consent to the making of an adoption order was necessary, and he would not have to be made a respondent to an application for such an order. It was decided in *Re M.*

(*an infant*) [1955] 1 All E.R. 911, that the putative father has not the rights of a parent and his consent to the making of an adoption order would not be required.

The matter, however, does not rest there. Section 5 of the Act of 1844 (cited above) continues . . . " and after the death of the mother of such bastard child . . . any two justices may, if they see fit, by order . . . from time to time appoint some person who, with his own consent shall have the custody of such bastard child, so long as such bastard child is not chargeable . . . and any two justices may revoke the appointment of such person, and may appoint another person in his stead: and every person so appointed . . . shall . . . be empowered to make application for the recovery of all payments becoming due under the order of the court of petty sessions . . . in the same manner as the mother . . . might have done."

Here, then, seems to lie the answer to the question posed, but not answered in the Court of Appeal. On the death of the mother the court may, by order, appoint a custodian of the child, the bastardy order will remain in force, and sums payable under it will be recoverable by the custodian. In other words, the putative father will remain " a person liable to contribute," and as such his consent to the making of an adoption order will be required, unless his refusal to give consent comes within one of the exceptions provided by the Act, which will enable the court to dispense with it.

DELEGATION OF FUNCTIONS TO COMMITTEES

By RAYMOND S. B. KNOWLES, D.P.A., A.C.I.S., A.C.C.S., L.A.M.T.P.I.

Whenever wide powers are delegated to committees two matters need close attention if a local authority's administrative machinery is to function as a co-ordinated whole. The first: a measure of control must be reserved to the council in full assembly. The second: there must at a lower level be some machinery to counteract the tendency towards disintegration.

Certain statutory provisions exist to ensure that a local authority do not, as it were, delegate away the final responsibility for which they are accountable both legally and politically. These provisions have been supplemented by the courts in a series of decisions that have done much to shape administrative practice. And it is by administrative regulation that a system of delegation to committees can be made to operate successfully.

Statutory Provisions

The common law maxim *delegatus non potest delegare* operates to exclude a local authority from delegating powers conferred upon them except where the authority are given express statutory power to do so. The statutory powers which exist in this respect are general and particular, each mutually exclusive.

There is, first, the general enabling power conferred by the Local Government Act, 1933, s. 85, which permits a local authority at their discretion, to delegate to any committee appointed thereunder—but to no other committee—any functions exercisable by them either with respect to the whole or a part of their area except (and this exclusion is of universal application) the power of levying or issuing a precept for a rate or of borrowing money.

There is, secondly, the power to delegate in enactments relating to particular functions, which regulate the setting up of a committee expressly as the administrative instrument through which those functions shall be discharged, *e.g.*, in the Education Act, 1944; the National Health Service Act, 1946; the Fire Services Act, 1947; the Agriculture Act, 1947; the Town and Country Planning Act, 1947; the National Assistance Act, 1948; the Children Act, 1948. The list is not exhaustive nor are the terms of delegation exactly the same in each case though, with one important exception, the differences are not material. This one material difference is that some post-war statutes (the Fire Services Act and the Agriculture Act among those listed) do not allow the committee to delegate to a sub-committee without seeking first the authority of the council to do so. There is no justification for this difference, as the Local Government Manpower Committee pointed out in their Second Report, but the amending legislation which they recommended is still awaited. The consequence merely is that there must be resort to the administrative device of getting the full council's agreement to the exercise of functions by a sub-committee.

A particular example of the inconsistency of the legislature even in pre-war days is the unusual provision in the Public Health Act, 1936. Section 273 of that Act expressly empowers a committee appointed by a local authority for any of the purposes of the Act first to appoint sub-committees and secondly to delegate to any sub-committees so appointed. The terms are not very different from those employed in post-war legislation for the delegation of functions by committees to sub-committees, but the provision is unusual because the Act contains no power or obligation to appoint a committee, and therefore the effect of s. 273 must be to extend, to a committee appointed under the general enabling power of s. 85 of the Act of 1933 for purposes of the Act of 1936, the power to delegate to sub-committees.

This could be important in practice because the question may arise whether powers conferred upon such a committee could properly be delegated by the committee to a sub-committee, if the power was not indisputably one conferred by the Act of 1936.

The learned editors of *Lumley's Public Health*, at pp. 2727–2728, discuss the probable effect of s. 273 at some length. They also raise in the same note the interesting question whether the power given to local authorities by s. 96 of the Act of 1933, to regulate a committee by prescribing standing orders, could be used to confer upon a committee the power to delegate to sub-committees. The editors of *Lumley* are doubtful whether this power could be so used, and obviously the same doubt is shared by others. For if it were competent for a local authority to be able to confer power upon a committee to delegate its functions to a sub-committee there would clearly be no need for the amending legislation which the Local Government Manpower Committee sought. Nevertheless, in the writer's view, it is a little difficult to distinguish, between the act of a local authority conferring powers upon a sub-committee on the recommendation of the parent committee concerned and the act of conferring by standing orders the power upon a committee to delegate to a sub-committee. True, in the first instance the local authority are able to reach a decision upon the facts of a specific case, whereas in the latter they would be giving a free hand to one or more of their standing committees to decide at its sole

discretion whether or not to delegate to sub-committees. But surely the difference is largely one of procedure? What if a local authority merely passed a resolution giving to all their standing committees, with appropriate reservations, the power to delegate their functions to sub-committees?

The inquiring reader who might like to pursue this question into more confusing depths is referred to the decisions in *Young* v. *Cuthbert* [1906] 1 Ch. 451, at p. 462; 70 J.P. 130, and *Richardson* v. *Abertillery U.D.C.* (1928) 92 J.P. 59, which appear to suggest that a committee to whom powers have been delegated have an inherent power to re-delegate to a sub-committee.

It is generally acceptable practice for a sub-committee to be presumed to have power to authorize matters of routine or minor importance within its terms of reference even though executive powers have not been conferred upon it. The point at which a sub-committee can no longer be presumed to possess such power may not, however, always be easy to determine, and a local authority would be wise never to leave the matter in doubt.

Exceptions from Delegation

The exception from committee functions of the power to levy a rate and borrow money is a cardinal principle, and the only instance where statutory enactment expressly specifies what shall be excluded from delegation. Necessarily, however, the terms of reference of most statutory committees are restricted to the terms of the statutes under which they are set up or regulated, and which prevent unrelated functions from being delegated to them. In the case of county councils, who are required to appoint finance committees, there is something akin to statutory exclusion in that a county authority are impliedly prohibited from delegating complete financial freedom to their other committees—a course which, if it could be followed, might in practice lead to insolvency of any authority.

The law envisages, however, that a local authority may want to retain certain matters exclusively in the hands of the full council, as administratively they must, and generally all statutes provide, on the lines of the provision made in s. 85 of the Act of 1933, that the delegation of functions to a committee shall be subject to such restrictions or conditions, if any, as the council think fit. The writer has suggested in these pages not long ago (at 120 J.P.N. 757) that a local authority would be wise when delegating powers to committees to make it quite clear, if such be the intention, that no reservations or conditions are attached to the delegation, otherwise (necessarily) than those imposed by statute.

The legal responsibility of a local authority in full assembly to retain ultimate power or to resume it when considered desirable has found expression in a number of decided cases. Delegation is not a denial or shedding of responsibility: statutory powers and duties conferred upon local government are conferred expressly upon the local authority themselves and not upon any of their committees, even statutory ones, and the council can never escape responsibility for the consequences which flow from the actions of committees purporting to exercise delegated powers. "Delegation does not imply a denudation of power or authority," said Lord Coleridge, C.J., giving judgment in *Huth* v. *Clarke* (1890) 25 Q.B.D. 391; 53 J.P. 86, a case which also produced the corollary (administratively inconvenient but logical enough) that a local authority who have delegated certain functions could also continue to exercise them because they have not parted with their own powers. *Manton* v. *Brighton Corporation* [1951] 2 All E.R. 101, further substantiates the view that delegated powers may be terminated at any time, even capriciously.

Administrative Control

What matters, then, should a local authority exclude from delegation to committees in order to ensure that they themselves retain adequate control?

For delegation to work satisfactorily, the Association of Municipal Corporations have said—and there seems to be no serious quarrel with this view from any quarter—"a council must (1) determine policy clearly, and (2) be prepared to have confidence in their committees and not to retain too many safeguards or impose too many limitations, but leave it to the committee to act within that determination." In short, a local authority in full assembly need to concern themselves only with policy and decisions of importance; and experience suggests that control retained at these key-points is adequate.

This means in practice that there will need to be two main categories of decisions reserved to the full assembly. First, all that miscellany of matters which either cannot lawfully be authorized by a committee or are of such major importance, because of the policy which they introduce or the principles which they imply, that most local authorities seem, not unnaturally, to want to pass final judgment upon them. Within this category come the making, variation and revocation of orders, statutory schemes, development plans, official reports, proposals, byelaws, and other general administrative arrangements which have to be submitted for ministerial approval. Secondly, there will be those matters arising in the exercise of a committee's delegated functions which involve new policy of major importance, or the substantial variation or extension of existing policy.

Preventing Disintegration

There is always a potential risk that where committees possess wide delegated powers they will tend to regard themselves as entities independent of one another, lacking identity with the council as a whole. This tendency towards disintegration is very real: it has its parallel in the departmental structure of a local authority's administration, which has often been severely criticized as leading to the "*fragmentation*" of local administration.

There are several ways in which the committee system can be held together as a properly co-ordinated whole. What concerns us here is the manner in which limitations can be placed upon delegated powers so as to ensure maximum co-ordination in the work of a local authority's committees. This can be secured in large measure through what have been called "*machinery*" committees, organized on the horizontal principle, though the name of "*co-ordinative*" committees used by the London county council better describes their essential role.

These committees—set up, for example, for financial, staffing, or central purchasing functions—deal with common services. Committees responsible for the discharge of a local authority's functions are obliged, by appropriate regulation in standing orders, to refer certain aspects of their work to the machinery or co-ordinative committees, so that in these aspects the council can determine a common policy and at the same time ensure a large measure of co-ordination on domestic issues.

Conclusion

All that has been said here is applicable only where there is delegation to committees—and generally the administrative problems referred to are potentially difficult only where the

degree of delegation is substantial. It has to be remembered that delegation to committees (and what is now to be said must be limited to committees in view of the terms of the recent White Paper on *Functions of County Councils and County District Councils in England and Wales*) is never obligatory.

Admittedly something akin to compulsion in this respect rests in the obligation cast upon local authorities to refer matters relating to the discharge of certain functions to the appropriate statutory committee, and to consider a report of that committee with respect thereto before exercising such functions (*e.g.*, the National Health Service Act, 1946, sch. 4, pt. II, para. 1; the Education Act, 1944, sch. 1, pt. II, para. 7). The practical effect of this sort of provision is to encourage delegation of functions to committees and, indeed, it tends to make such a course near obligatory, if a local authority wish to avoid the necessity for too frequent meetings of the full council.

In some quarters the mere provision for delegation is regarded as little short of heresy. Many county district authorities, for example, agree with the sentiments once expressed by the Urban District Councils Association: "One of the basic principles of local government administration," they reminded their members, "is that the will of the council is sovereign on matters where the authority is to make the decision. Therefore on any approach to the question of granting standing delegation this principle must be kept well in mind, especially having regard to the difficulty of distinguishing the point where settlement of policy changes to execution of policy."

WEEKLY NOTES OF CASES

HOUSE OF LORDS

(Viscount Simonds, Lord Reid, Lord Tucker, Lord Somervell of Harrow and Lord Denning)

DIRECTOR OF PUBLIC PROSECUTIONS v. HEAD

January 15, 16, March 6, 1958

Criminal Law—Carnal knowledge—Mental defective—Unlawful detention in institution—Mental Deficiency Act, 1913 (3 *and* 4 *Geo.* 5, *c.* 28), *s.* 56 (1) (*a*).

APPEAL from Court of Criminal Appeal.

The respondent was convicted and sentenced on two charges of having had carnal knowledge of a woman in October, 1956, while she was on licence from an institution for mental defectives, contrary to the Mental Deficiency Act, 1913, s. 56 (1) (*a*). The woman had been committed to an approved school, and in July, 1947, had been transferred to a certified institution under an order made by the Home Secretary under s. 9 of the Act. Continuation orders had been made. On appeal to the Court of Criminal Appeal by the respondent against his conviction and sentence on the ground that the woman was not legally detained, the original detention order not having been validly made, the Crown admitted that the order was invalid, but contended that, as the woman was, in fact, a mental defective and a "woman . . . under care and treatment in an institution . . . placed out on licence therefrom" within s. 56 (1) (*a*) of the Act, the offence had been committed. The Court of Criminal Appeal quashed the conviction on the ground that, as the woman had not been lawfully made subject to the Act, s. 56 (1) (*a*) did not apply. On appeal to the House of Lords by the Crown,

Held: (i) (VISCOUNT SIMONDS and LORD DENNING dissenting): on proof that a person was detained as an inmate in one of the institutions specified in the Act and was under care or treatment therein as a defective, or was shown by the production of the licence to be out on licence from one of those places to which the system of licensing under the Act was applicable, there was *prima facie* evidence that the person was lawfully under care or treatment as such, but, the foundation for the presumption being the legality of the detention, a prosecution under s. 56 (1) (*a*) must fail if it was shown or admitted, as in the present case, that the detention was invalid; the invalidity of the original order of detention had not been cured by the continuation orders and a subsequent re-classification of the woman placing her in a different category of defectiveness, since she had never been classified as a mental defective within the Act; and, therefore, the appeal failed.

Counsel: The Attorney-General (*Sir Reginald Manningham-Buller, Q.C.*), *Rodger Winn*, and *A. S. Booth*, for the Crown; *Guthrie Jones*, for the respondent.

Solicitors: *Director of Public Prosecutions; Ludlow, Head* and *Walter*.

(Reported by G. F. L. Bridgman, Esq., Barrister-at-Law.)

COURT OF APPEAL

(Before Lord Denning, Hodson and Morris, L.JJ.)

PYX GRANITE CO., LTD. v. MINISTRY OF HOUSING AND LOCAL GOVERNMENT AND ANOTHER

December 9, 10, 11, 12, 1957, February 7, 1958

Town and Country Planning—Permission for development—Refusal—"Development authorized by local or private Act"—Agreement between quarry-owners and local authority as to areas to be quarried—Agreement "confirmed and made binding" by local and private Act—Permission granted subject to conditions—Conditions as to land not included in application for permission—Validity—Action for declaration as to validity of refusal and conditions—Jurisdiction of High Court—Town and Country Planning Act, 1947 (10 *and* 11 *Geo.* 6, *c.* 51), *s.* 14 (2), *s.* 17 (1).

APPEAL by defendants from a decision of LLOYD-JACOB, J.

In 1924 a quarrying company owned certain freehold lands and had quarrying rights on other land in the Malvern Hills. During the passage through Parliament of the Bill for the preservation of the Malvern Hills, which ultimately became the Malvern Hills Act, 1924, negotiations took place between the company and the promoters of the Bill, the Malvern Conservators and the Malvern U.D.C., which resulted in an agreement between the parties that the company should continue to quarry on its freehold land, should abandon its quarrying rights in a certain area of other land, should retain its quarrying rights in part of other land known as the N. area, and should have transferred to it additional rights in other parts of the N. area. The terms of this agreement were embodied in heads of agreement which were drawn up, but not executed, before the Bill became law, and were set out in sch. 4 to the Act. The Act provided, by s. 54, that "for the protection of the company the following provisions shall, unless otherwise agreed in writing between the company and the conservators and the Malvern council, have effect (that is to say): the heads of agreement . . . are hereby confirmed and made binding on the company and the conservators and the Malvern council, and the provisions of this Act shall only apply to or affect the undertaking property or rights of the company subject to the provisions of the said heads of agreement." The heads of agreement contemplated the execution of a formal agreement, which was ultimately effected by a deed, made on December 14, 1925, and executed by the company, the conservators and the council, whereby the agreed areas in which the company should quarry were defined. On November 17, 1947, the company applied to the council for planning permission to develop two of the agreed areas of land for quarrying purposes. One of these areas, the T. area, was the freehold property of the company, the other was the N. area. On January 14, 1948, the Minister called in this application for decision by himself. In July, 1952, a public enquiry was held and the company invited the dismissal of their application on the ground that the proposed development was authorized by the Act of 1924 and so was within class 12 of the General Development Orders as being "development authorized by any local or private Act of Parliament . . . which designates specifically both the nature of the development thereby authorized and the land upon which it may be carried out." The Minister, having rejected this submission, on September 30, 1953, refused permission to work parts of the T. area, granted permission to work the remainder of the T. area only on conditions and only until June 30, 1960, and refused permission for any work in the N. area except the minimum required to secure safety from a threatened fall of rock.

The company intended to crush and screen the stone to be quarried from the T. area on some of their other land, which

was very near, with plant and machinery which was already installed there. As this plant and machinery had been in use on the same land since before 1947 no planning permission was required for its use or maintenance there, and so no application for any planning permission in respect of this land was made. Nevertheless, the conditions on which the Minister granted permission to work part of the T. area limited the times when the crushing and screening plant and machinery could be used and required its eventual removal. In December, 1953, the company issued a writ for declarations (*a*) that it was entitled to carry out the proposed development without obtaining any special planning permission, and (*b*) that the above conditions as to crushing and screening were invalid in that they applied only to land in respect of which no application to develop had been made. The planning authorities contended, *inter alia*, (i) that the Court had no jurisdiction because s. 17 of the Act of 1947, by providing for applications to the Minister to determine whether planning permission was required to be obtained for any proposed development, impliedly excluded the right to apply to the Court for such a declaration, (ii) that the proposed development was not within class 12, (iii) that the wide discretion to impose conditions conferred by s. 14 of the Act of 1947, and the availability of the alternative remedy of *certiorari*, each prevented the exercise of that discretion being questioned by proceedings for a declaration.

Held: (i) the conditions required "the carrying out of works on" land under the control of the company, and, as the plant and machinery were ancillary to the getting of stone from the permitted quarries, could properly be regarded as expedient "in connexion with" the permitted development, and, therefore, they were within s. 14 (2) and were valid.

(ii) (*per* LORD DENNING and MORRIS, L.J.), the Court had jurisdiction to make the declarations sought because, as to declaration (*a*), there was nothing in the Act of 1947 which debarred a developer from seeking such a ruling of the High Court; and, as to declaration (*b*), the remedy applied to administrative acts as well as to judicial acts whenever their validity was challenged because of a denial of justice, or for other good reason, and the facts that the conditions imposed would operate as a land charge and that there was no statutory remedy available for the purpose were such good reasons.

(iii) (*per* LORD DENNING and HODSON, L.J.), the proposed development was authorized, not by the Act of 1924, but by the heads of agreement, and so was not within class 12 and special planning permission was necessary, because, although the heads of agreement amounted to an implied agreement by the conservators and the council authorizing the company to quarry stone within the agreed limits, and although the agreement was "confirmed and made binding" by s. 54, s. 54, which contemplated the execution of the formal agreement of December 14, 1925, did no more than make the unexecuted heads of agreement as binding as a contract, and so their provisions could not be regarded as equal to a statute, or as carrying the authority of Parliament, but only as of contractual force: *R.* v. *Midland Ry. Co.* (1887) 10 Q.B.D. 540, applied.

Per LORD DENNING (MORRIS, L.J., concurring): *Certiorari* was confined to judicial acts, and it could be argued that the Minister, when granting planning permission, was acting, not judicially, but administratively, and that his decision was, therefore, not subject to *certiorari*. If the Minister had sought to impose like conditions about plant or machinery a mile or so away, it might well be that could only be done by an order under s. 26.

Counsel: *Squibb, Q.C., Rodger Winn* and *Leggatt*, for the planning authorities, the Ministry and the county council; *Ramsay Willis, Q.C.*, and *Scrivens*, for the quarry owners.

Solicitors: *Solicitor*, Ministry of Health; *Sharpe Pritchard & Co.*, for clerk to Worcestershire county council; *Stephenson, Harwood and Tatham.*

(Reported by Henry Summerfield, Esq., Barrister-at-Law.)

CHANCERY DIVISION

(Before Dankwerts, J.)

LONDON COUNTY COUNCIL *v.* CENTRAL LAND BOARD

March 12, 1958.

Town and Country Planning—Development value—Determination—Estate acquired for building purposes—Heavy expenditure to make part of land suitable—No development value for whole land—Town and Country Planning Act, 1947 (10 *and* 11 *Geo.* 6, *c.* 51), *s.* 70.

ORIGINATING SUMMONS.

The county council acquired an estate of 231 acres for the purpose of developing it as a housing estate. The greater part of the land was suitable for building houses, but on part of it the council had to meet heavy expenditure on site works so that the cost of those works was in excess of the value of the land as a whole for building purposes. The Central Land Board claimed £22,500 as a development charge on the footing that the permission had increased the value of the land in that the county council was at liberty to carry out the development as far as it was profitable and was under no legal obligation to develop the whole land.

Held: the development charge had to be assessed regarding all the land in respect of which permission was granted and on the assumption that all the operations would be carried out, and, as the value of the land as a whole was not increased by the permission if all the operations were carried out, no development charge had to be paid.

Counsel: *Rowe, Q.C.*, and *H. E. Francis*, for the London county council; *Denys B. Buckley*, for the Central Land Board.

Solicitors: *Solicitor to London county council; Treasury Solicitor.*

(Reported by F. Guttman, Esq., Barrister-at-Law.)

(Before Harman, J.)

LITHERLAND URBAN DISTRICT COUNCIL *v.* LIVERPOOL CORPORATION AND ANOTHER

February 28, March 3, 1958

Local Government—Transport undertaking—Free travel—Concessions for aged persons—Undertaking operating in area of another council—"Cost incurred . . . in . . . granting . . . travel concessions" in that area—Basis of calculation—Public Service Vehicles (Travel Concessions) Act, 1955 (3 *and* 4 *Eliz.* 2, *c.* 26), *s.* 1 (4).

SUMMONS.

The defendant corporation operated a transport undertaking in certain local government areas, including the plaintiff council. By virtue of the Public Service Vehicles (Travel Concessions) Act, 1955, s. 1 (1), the defendant corporation granted free travel concessions to old people and certain other "qualified persons" as defined in s. 1 (2) of the Act, and a certificate of the appropriate licensing authority defining the nature and extent of the travel concessions had been obtained under s. 1 (3) of the Act. The persons who qualified for the concessions were issued with passes and were allowed free travel during the permitted hours. By s. 1 (4) of the Act the council in whose area another local authority ran public service vehicles might contribute to any "cost incurred . . . in . . . granting . . . travel concessions" in that area. On the question of the basis on which such "cost incurred" was to be calculated,

Held: by dividing the total expenditure of the undertaking for the year by the total number of journeys made by fare paying passengers and pass holders it was possible to calculate the share of the total cost of the undertaking attributable to each passenger journey whether made by a fare paying passenger or a pass holder, and this was the basis on which the "cost incurred" was to be calculated so as to arrive at the sum to which the plaintiff council was, by s. 1 (4) of the Act, permitted to contribute.

Counsel: *Rowe, Q.C.*, and *D. B. Buckley*, for the plaintiff; *Lamb, Q.C.*, and *E. W. Griffith*, for the corporation; *Lightman, Q.C.*, and *J. V. Nesbitt*, for the second defendant, a ratepayer of the Litherland U.D.C.

Solicitors: *Sharpe, Pritchard & Co.*, for the clerk to the Litherland U.D.C.; *Cree, Godfrey & Wood*, for Town Clerk, Liverpool.

(Reported by R. D. H. Osborne, Esq., Barrister-at-Law.)

(Before Roxburgh, J.)

RE S. (AN INFANT)

February 28, 1958

Infant—Custody—Order of justices—Order involving transfer of infant from mother to father—Application of mother for stay pending appeal—Proper course for justices to adopt.

MOTION.

The infant was under five years old and had always lived with its mother. The parents were married, but at Easter, 1956, they had separated. The infant continued to live with the mother, but the father saw the infant at fortnightly intervals for about one year thereafter. On the father's application the justices, on February 24, 1958, committed the legal custody of the infant to the father and granted the mother right of limited access. Counsel for the mother applied for a stay of the order pending an appeal, but the justices refused to grant a stay and gave no reasons for so doing. The father then attempted to take the infant from the mother, but she refused and the infant remained with her. Notice of appeal by the mother against the order was served on February 25, 1958. Next day the mother applied *ex parte* to the Chancery Division and it was then ordered that the infant should remain in her custody until February 28, 1958, or until further

order in the meantime, and liberty to serve notice of motion for that date was granted. On the hearing of the motion,

Held: (i) where justices are satisfied that there is a genuine intention to appeal from an order made by them transferring an infant from one parent to another and there is no urgency for the transfer it is not normally in the interests of the infant to refuse a reasonable stay pending the appeal;

(ii) where the justices consider that such a stay ought to be refused, unless there is a greater sense of urgency the order should be made to take effect after a few days to allow the party aggrieved to apply to the High Court;

(iii) there being no sense of urgency in the present case, a stay would be granted and the infant would remain in the custody of the mother until the hearing of the appeal.

Counsel: *T. A. C. Burgess*, for the mother; *W. A. B. Forbes*, for the father.

Solicitors: *Waterhouse & Co.* for *Burgess & Chesher*, Bedford; *J. D. Langton & Passmore*, for *Mellows & Sons*, Bedford.

(Reported by R. D. H. Osborne, Esq., Barrister-at-Law.)

QUEEN'S BENCH DIVISION

(Before Lord Goddard, C.J., Streatfeild and Slade, JJ.)

IN RE HASTINGS

March 7, 1958

Criminal Law—Sentence—Validity—One sentence for five offences—No reference to sentences being concurrent.

MOTION for writ of *habeas corpus*.

The applicant, Edward Thomas Hastings, was convicted at Liverpool Crown court on an indictment containing five counts, the first for larceny, the second, third and fourth for obtaining money by false pretences, and the fifth for fraudulent conversion. Separate verdicts were returned on each count. In passing sentence, the recorder said: "You have been convicted on the plainest evidence of deliberate, calculated and systematic frauds. . . . You will go to prison for four years' corrective training." The applicant obtained leave to appeal in respect of three of the counts. On December 18, 1957, the Court of Criminal Appeal quashed the conviction on the first count, and dismissed the appeal on the others. The applicant obtained leave to apply for a writ of *habeas corpus* against the governor of Leicester Prison on the ground that he was detained there when no lawful sentence upon him existed,

Held: that, although the recorder did not use the word "concurrent," it had manifestly been his intention to pass a concurrent sentence on each count, and, therefore, the sentence was lawful and the application failed.

Per curiam: When a court is in fact passing concurrent sentences on each count of an indictment, it is always desirable that the court should use words such as "on each count" or "concurrent."

Counsel: *Marshall, Q.C.*, and *Neil Butter*, for the applicant; *Rodger Winn* and *G. J. Bean*, for the governor.

Solicitors: *Field, Roscoe & Co.*, for *Keith Moore*, Birkenhead; *Treasury Solicitor*.

(Reported by T. R. Fitzwalter Butler, Esq., Barrister-at-Law.)

PROBATE, DIVORCE AND ADMIRALTY DIVISION

(Before Lord Merriman, P., and Wrangham, J.)

BOWEN v. BOWEN

February 4, 5, 1958

Husband and Wife—Maintenance order—Application to vary—Order for discharge—Revival of discharged or revoked order—Magistrates' Courts Act, 1952 (15 *and* 16 *Geo.* 6 *and* 1 *Eliz.* 2, *c.* 55), *s.* 45 (2), *s.* 53.

APPEAL from justices.

The parties were married in 1950. They separated in February, 1952, and on May 3, 1952, an order under the Summary Jurisdiction (Separation and Maintenance) Acts, 1895 to 1949, was made in the wife's favour on the ground that the husband had been guilty of wilful neglect to provide reasonable maintenance for her, the husband being ordered to pay her £2 a week as maintenance. On May 28, 1957, the wife was granted a decree absolute of divorce on the ground of the husband's adultery. The wife did not apply for maintenance in her divorce proceedings. On September 27, 1957, the husband applied by complaint to the justices to vary the order of May 3, 1952, by reducing the amount of maintenance on the grounds that his means were reduced, that the wife's means were sufficient without the weekly sum of £2, and that the parties had been divorced. The justices revoked the order of May 3, 1952, and in their reasons stated, *inter alia*, that, if the wife's circumstances deteriorated, she could apply again to the court. On appeal by the wife,

Held: the justices had no jurisdiction to revoke, which was equivalent to discharge, the order of May 3, 1952, since the husband's complaint was merely to vary that order; but in the circumstances the wife was entitled only to a nominal sum by way of maintenance.

Observations on the question whether an order which has been revoked or discharged can subsequently be revived under the Magistrates' Courts Act, 1952, s. 53.

Counsel: *A. T. Hoolahan*, for the husband; *P. E. Underwood*, for the wife.

Solicitors: *Kinch & Richardson*, for *T. A. Matthews & Co.*, Hereford; *Corner & Wadsworth*, Hereford.

(Reported by G. F. L. Bridgman, Esq., Barrister-at-Law.)

MAGISTERIAL LAW IN PRACTICE

Daily Express. February 14, 1958

ST. VALENTINE'S DAY SWEETHEARTS MUST NOT WED

Until A Girl Can Find the Father She Has Seen Only Once

Express Staff Reporter

An 18 year old motherless girl was yesterday refused permission to marry because she cannot trace her father. Emily Madin told Torquay magistrates that she saw her father only once, when she was 10 years old.

Her mother died the day after Emily was born. And since then Emily has been brought up by foster parents.

She asked to be allowed to marry 20 year old Derick Bridge, a Regular airman.

For the young couple, Mr. Robert Almy said they met four years ago on St. Valentine's Day and were deeply in love.

They hoped to marry tomorrow, because Derick would probably be posted overseas soon.

Derick's parents were happy to give their consent to the wedding.

"They are a very decent young couple," said Mr. Almy. "This is not a sudden infatuation."

Said the chairman of the bench, Major Gordon Edmonds: "If we could allow our hearts to rule us, we would certainly bless this marriage.

"We like both of you and feel sure this is the answer for you. Unfortunately, we do not feel inquiries have been going on long enough to trace your father.

"Also we have decided this court is not one which can give jurisdiction in this case.

"But if you persist in your inquiries, in a month's time you will have a very much stronger case to take before another court. We are very sorry about it."

Emily stayed with Derick at his father's home in Torquay last night. Derick said: "We tried to trace Emily's father through the children's officer in Derby.

"He had two addresses. But her father could not be found at either and no one living there could give us a lead."

Said the Vicar of St. Luke's, Torbay, the Rev. Henry Ryder-Jones: "I must get in touch with this nice young couple. I expect Emily is very upset."

Said solicitor Robert Almy: "We will continue to search for the father. If we can't find him, the matter will have to be decided by the High Court. One cannot blame the magistrates. It is a technical point over which they have no control."

This is a case in which the magistrates took the view that they had no jurisdiction.

We have expressed the opinion ourselves that the effect of s. 3 (5) of the Marriage Act, 1949, as explained by *R.* v. *Sandbach JJ., ex parte Smith* [1950] 2 All E.R. 781; 114 J.P. 514, is that in consent to marry cases county courts and magistrates' courts have jurisdiction only in cases where a person refusing consent resides within their jurisdiction. In all other cases coming within s. 3 (1) of the Act application should be made to the High Court. (*See* an article, "Consent to Marriage. A Question of Jurisdiction," at 117 J.P.N. 819; "But Miss 17 must wait," at 120 J.P.N. 61, and "They've heard they can marry today," at 121 J.P.N. 150.)

Evening Standard. January 25, 1958

FINDINGS ARE KEEPINGS

Michael Colman, 44, male nurse, of Relf Road, Peckham, successfully claimed at Wimbledon today that anything abandoned could be taken.

He was acquitted of stealing two hub caps from a car he found in Coombe Woods, Wimbledon. The police said that the car was abandoned there after being stolen.

Property that has been abandoned by the owner, and which has not passed into the possession of some other person, is not capable of being stolen, so it is a good defence to a charge of larceny by finding to prove that the finder believed on reasonable grounds that the property had been abandoned (10 *Halsbury* (3rd edn.) para. 1485).

In *Hibbert* v. *McKiernan* [1948] 1 All E.R. 860; 112 J.P. 287, a case in which golf balls were picked up on golf links after being lost by their original owners, it was held that every householder and landowner intends to exclude thieves from his property, and this confers on him a special property in goods found on his land sufficient to support an indictment if the goods are taken without a claim of right and with felonious intent.

In *Williams and Others* v. *Phillips*. *Roberts and Others* v. *Phillips* (1957) 121 J.P. 163, it was held that refuse having been placed by the owners of premises in dustbins for the specific purpose of being collected by the local authority, had not been abandoned by the owners when it was placed in the dustbins, and that as soon as the refuse was placed in a dustcart belonging to the corporation, it passed into the constructive possession of the corporation. (*See Magisterial Law in Practice*, 121 J.P.N. 487.)

In Ellerman's Wilson Line v. *Webster* (1952) 1 Lloyds Rep. 179, the respondent, a lighterman employed by the appellants, had swept up copper scraps from four lighters and had been apprehended whilst removing them. The Divisional Court held that it was open to the magistrate to find that the respondent had honestly believed that the scraps were abandoned and so had had no felonious intent.

NEW STATUTORY INSTRUMENTS

1. **BRITISH NATIONALITY.** The British Nationality Act, 1958 (Commencement) Order, 1958.

Section 1 of the British Nationality Act, 1958, provides for the inclusion of the Federation of Rhodesia and Nyasaland in place of Southern Rhodesia in s. 1 (3) of the British Nationality Act, 1948, which contains the list of Commonwealth countries citizenship of which, equally with citizenship of the United Kingdom and Colonies, confers the status of a British subject. Section 1 (5) of the Act of 1958 provides that that section shall come into operation on a date to be appointed by statutory instrument made at the request of the Government of the Federation of Rhodesia and Nyasaland. This order appoints March 1, 1958, for the purpose.

Made February 27, 1958. No. 327 (C.3), 1958.

2. **SUPERANNUATION AND OTHER TRUST FUNDS (VALIDATION).** The Superannuation and other Trust Funds (Fees) Regulations, 1958.

These regulations increase as from April 1, 1958, the fees payable for registration of a fund and of an amendment of rules under the Superannuation and other Trust Funds (Fees) Regulations, 1952 (which are hereby revoked).

Coming into operation April 1, 1958. No. 341, 1958.

3. **BUILDING SOCIETIES.** The Building Societies (Amendment of Fees) Regulations, 1958.

These regulations increase as from April 1, 1958, some of the fees payable by Building Societies under the Building Society Regulations, 1895 (S.R. & O. 1895/16), as amended by the Building Society (Amendment of Fees) Regulation, 1922 (S.R. & O. 1922/843).

Coming into operation April 1, 1958. No. 342, 1958.

4. **CURRENCY AND BANK NOTES.** The Fiduciary Note Issue (Extension of Period) Order, 1958.

This order extends for a further two years the period during which the Fiduciary Issue may stand at amounts continuously exceeding £1,575 million.

Came into operation March 14, 1958. No. 326, 1958.

5. **PETROLEUM.** The Carbon Disulphide (Conveyance by Road) Regulations, 1958.

These regulations replace with amendments the Bisulphide of Carbon (Conveyance) Regulations, 1935 (S.R. & O. 1935/583), the Bisulphide of Carbon (Conveyance) Regulations, 1947 (S.R. & O. 1947/1803), the Bisulphide of Carbon (Conveyance) (No. 2) Regulations, 1947 (S.R. & O. 1947/2109), the Bisulphide of Carbon (Conveyance) Regulations, 1948 (S.I. 1948/2373) and the Bisulphide of Carbon (Conveyance) Regulations, 1949 (S.I. 1949/271). All those regulations will cease to have effect on the revocation by the Petroleum (Carbon Disulphide) Order, 1958 (S.I. 1958/257), of an earlier Order in Council (S.R. & O. 1926/1422) (upon the continued operation of which those regulations depend). The present regulations will come into operation at the same time as the revocation takes effect.

The principal changes of substance are as follows: the name "carbon disulphide" is used instead of "bisulphide of carbon" in accordance with the modern usage; the maximum permissible total capacity of tank wagons is increased from 2,400 gallons to 2,700 gallons and the maximum capacity of each compartment of a tank wagon is increased from 600 gallons to 700 gallons (by virtue of reg. 24 (2) and a corresponding provision in the regulations of 1935 a tank or compartment is deemed not to exceed a maximum volume if it can hold contents of that volume and yet leave such a margin only as is necessary to allow for expansion of the contents); and provision is included for the enforcement of the regulations by local authorities.

Coming into operation April 1, 1958. No. 313, 1958.

6. **CINEMATOGRAPHS AND CINEMATOGRAPH FILMS.** Exhibition of Films. The Cinematograph Films (Renters' Licences) (Amendment) Regulations, 1958.

These regulations amend the Cinematograph Films (Renters' Licences) Regulations, 1948.

The fee payable for a renter's licence is increased from five guineas to 10 guineas.

Coming into operation April 1, 1958. No. 309, 1958.

7. **PESTS.** Destructive Insects and Pests. The Wart Disease of Potatoes Order, 1958.

This order which applies to England and Wales consolidates with amendments the Wart Disease of Potatoes Order of 1941 and a General Licence Order modifying its terms. The principal changes are that the Minister of Agriculture, Fisheries and Food may by notice declare and define land infected with wart disease; and that the destruction of infected potatoes must be carried out in accordance with the terms of a notice served by an authorized officer.

The provisions in the earlier orders which prohibit the sale of infected potatoes and the planting on infected land of susceptible varieties of potatoes, and which restrict the sale of planting of imported potatoes are repeated in this order.

Came into operation March 5, 1958. No. 308, 1958.

PERSONALIA

APPOINTMENTS

Mr. John Marcus Neal has been appointed clerk to Banbury, Oxon, borough magistrates and will succeed Mr. E. C. Fortescue, on the latter's retirement at the end of March. Mr. Neal, who is 43 years of age, is a partner in the firm of Messrs. Stockton, Sons and Fortescue, of which firm Mr. E. C. Fortescue is the senior partner. Mr. Neal has occasionally deputized for Mr. Fortescue in the past, and he has practised in Banbury since 1946. Mr. Neal was educated at Oundle, and formerly practised at Luton. The Fortescue family have held the position of clerk for over a century, dating from Mr. E. C. Fortescue's grandfather's appointment in 1848. Mr. Fortescue's nephew, Mr. R. D. Huntriss is carrying on the family connexion, as clerk to Chipping Norton, Brackley and Banbury and Bloxham magistrates' courts. Although Mr. E. C. Fortescue is retiring as clerk he is continuing his 60 years' career in the legal profession, for he is retaining his office as coroner for North Oxfordshire.

Mr. E. W. J. Nicolson, town clerk of Abingdon, has been appointed Parliamentary Counsel to the Government of Ghana. Mr. Nicolson, 52 years of age, is also clerk of the peace. He took honours in both his law degree and in the Law Society's examinations. Mr. Nicolson was formerly town clerk of Penzance, subsequently became deputy town clerk of the city of Westminster and before going to Abingdon in 1949 was town clerk of Chelsea.

Mr. Robert McCartney, at present assistant chief constable of Monmouthshire, has been appointed chief constable of Herefordshire. He will succeed Mr. Freeman Newton, who is retiring after 31 years' service. Mr. McCartney first joined the police in Lancashire as a cadet in 1930. By April, 1948, he was detective chief inspector of Lancashire C.I.D. and later the same year was appointed second in command of Lancashire C.I.D. He was appointed assistant chief constable of Monmouthshire in January, 1956.

Mr. Alan Bainton is to be governor of Pentonville Prison, in place of Mr. D. G. W. Malone, who is seconded to the Colonial Service to be Director of Prisons, Cyprus. Mr. Bainton will be succeeded as governor of Stafford Prison by Mr. Peter Marsden Burnett, at present governor class II at Rochester Borstal.

NOTICES

The next court of quarter sessions for the city of Winchester will be held on Wednesday, April 2, 1958, at the Guildhall, Winchester, commencing at 10.45 *a.m.*

The next court of quarter sessions for the county of Merioneth will be held on Tuesday, April 1, 1958, at Bala.

THE WEEK IN PARLIAMENT

From Our Lobby Correspondent

APPROVED SCHOOLS

Mr. J. B. Eden (Bournemouth, W.) asked the Secretary of State for the Home Department (i) whether he was satisfied that the corrective training and disciplining of boys at approved schools was in general strict enough to ensure that the public was not endangered on their release; and if he would make a statement; (ii) what special measures were taken to safeguard the public against the possibility of crimes being committed by boys when on leave from approved schools.

The Secretary of State for the Home Department, Mr. R. A. Butler, replied that one of the principal objects of approved school training was to develop good habits and self-discipline in order to help boys to become useful and co-operative members of society. Home leave was a part of that training, and no special measures were taken when it was allowed. The schools had many more successes than failures, but the failures were a challenge to the schools and to his Department to seek improvements in methods of training. The approved school system was, of course, one of the matters now being considered by the Departmental Committee under the chairmanship of Lord Ingleby.

PARLIAMENTARY INTELLIGENCE

Progress of Bills

HOUSE OF LORDS

Wednesday, March 19

DRAMATIC AND MUSICAL PERFORMERS' PROTECTION BILL—read 1a.

HOUSE OF COMMONS

Tuesday, March 18

TRADING REPRESENTATIONS (DISABLED PERSONS) BILL—read 1a.
INDUSTRIAL ASSURANCE AND FRIENDLY SOCIETIES ACT, 1948 (AMENDMENT) BILL—read 1a.

Thursday, March 20

CONSOLIDATED FUND (NO. 2) BILL—read 3a.

NOTICES

SOLICITORS' ARTICLED CLERKS' SOCIETY

Activities for April, 1958

Tuesday, 1: Scottish Reels. At the Law Society's Hall at 6.30 *p.m.* with refreshments available throughout the evening. Sheila Amos will demonstrate for the "learners."

Tuesday, 8: Theatre Party. Brian Burrett will be taking a party of S.A.C.S. to see "A Touch of the Sun" at the Saville Theatre. Tickets can be obtained by telephoning Mr. Burrett at his office number—HOLborn 0874.

Tuesday, 15: Any Questions and Discussion. A panel will answer any questions put to it—however controversial, and this will be followed by an informal general discussion. At the Law Society's Hall, starting at 6.30 *p.m.*, with refreshments available throughout.

Tuesday, 22: New Members' Evening. At the Law Society's Hall, starting at 6.30 *p.m.*, where all new members have the opportunity of meeting their fellow articled clerks. There will be refreshments available, after which this year's president will speak and answer any questions on the Society and its work.

Tuesday, 29: Artificial Insemination by Donor. A debate with the Irish Law Students on A.I.D. will be held at the Law Society's Hall, starting at 6.30 *p.m.* The motion will read "That this House deplores A.I.D.," and will be proposed by the Irish Articled Clerks. This promises to be a very interesting evening, and all members of S.A.C.S. should attend to give their support by speaking from the floor. Refreshments will be served from 6 *p.m.*

May

Tuesday. 6: Theatre Party. A party from S.A.C.S. will be going to see Norman Wisdom in "Where's Charley" at the Palace Theatre. Tickets from Brian Burrett at his office number—HOLborn 0874.

BILLS IN PROGRESS

1. **Registered Designs Act, 1949 (Amendment) Bill.** A Bill to provide more effective protection for the proprietors of registered designs and for other purposes. [Private Member's Bill.]

2. **Drainage Rates Bill.** A Bill to amend the provisions of the Land Drainage Act, 1930, relating to the ascertainment of annual value for the purposes of drainage rates; and for purposes connected therewith. [Private Member's Bill]

3. **Agriculture Bill.** A Bill to amend the Agriculture Act, 1947, the Agricultural Holdings Act, 1948, and Agriculture (Scotland) Act, 1948, and the Agricultural Holdings (Scotland) Act, 1949; to require the landlord of an agricultural holding in certain cases to provide, repair or alter fixed equipment on the holding; to amend part II of the Landlord and Tenant Act, 1954, as to tenancies of agricultural land excluded therefrom; to amend the schedule to the Corn Production Acts (Repeal) Act, 1921, and s. 21 of the Hill Farming Act, 1946; and for purposes connected with the matters aforesaid.

4. **Physical Training and Recreation.** A Bill to make provision for loans to be made by local authorities for physical training and recreation in Great Britain. [Private Member's Bill.]

5. **Tribunals and Inquiries Bill.** An Act to constitute a Council on Tribunals; to make further provision as to the appointment, qualifications and removal of the chairman and members, and as to the procedure, of certain tribunals; to provide for appeals to the courts from decisions of, or on appeal from, certain tribunals; to extend the supervisory powers of the High Court and the Court of Session; to abolish certain restrictions on appeals from the Court of Session to the House of Lords; and for purposes connected with the matters aforesaid. [H.L.]

6. **Slaughterhouses Bill.** [As amended by Standing Committee A.]

7. **Tenants Protection Bill.** A Bill to protect tenants of dwelling-houses released from control under the Rent Acts by reason of the provisions of s. 11 of the Rent Act, 1957. [Private Member's Bill.]

8. **Road Transport Lighting (Amendment) Bill.** An Act to amend s. 2 and 3 of the Road Transport Lighting Act, 1957, so as to permit the use of amber coloured reflectors on the pedals of bicycles and tricycles.

9. **Public Service Vehicles (Schoolchildren).** A Bill to enable local authorities to grant to schoolchildren new travel concessions.

10. **Matrimonial Proceedings (Children) Bill.** [As amended by Standing Committee C.]

11. **Consolidated Fund (No. 2) Bill.**

PSYCHOLOGY OF THE UNCONSCIOUS

Fiat justitia; ruat caelum, says the Latin tag—"Let justice be done, though the heavens fall." This makes an admirable motto for any court of law; it has long been the proud boast of the English legal system that its Judges can and do dispense justice without fear or favour. Seven and a half centuries have passed since the Great Charter of 1215 enacted that justice might not be delayed, sold or denied to any man; and the Statute of Northampton, 1328, proudly proclaimed that "it shall not be commanded by the Great or Little Seals (in other words, by the Crown or any of its ministers) to disturb or delay common right; and, though such commandments do come, the justices are not therefore to leave to do right in any point." Human beings, however, are fallible, and history shows that these lofty ideals have not always been practically observed. Strange things were done, by subservient law-officers, at the behest of masterful monarchs in Tudor times; in the seventeenth century the Court of Star Chamber and other arbitrary tribunals arrogated to themselves unconstitutional powers, until they were swept away by the Bill of Rights in 1688. The safeguard against pressure being brought to bear upon the Judiciary through fear of dismissal was first created by the Act of Settlement, 1700, in which it was enacted that the Judges should hold office during good behaviour, subject only to a power of removal by the Sovereign on an address presented by both Houses of Parliament. This vital provision was re-enacted in the Judicature Act, 1875, and is still in force today by virtue of the Supreme Court of Judicature (Consolidation) Act, 1925.

None of these imposing enactments, however, would be fully effective to protect the subject against the tyranny of arbitrary power if it were not for the fearless integrity and strict impartiality of most of those who, during the past 200 years, have held high judicial office. The reigns of George II and George III included periods of great political corruption and administrative ineptitude, which were relieved only by the emergence of illustrious figures on the Bench—Chancellors like Hardwicke, Thurlow and Eldon, and such a master of the common law as Lord Chief Justice Mansfield. Judges of today, successors to these great traditions, practise their high calling with scrupulous fidelity. In their persons the Spirit of Justice, conventionally blindfold, balances the scales evenly by a sort of instinct—unconscious, we had almost said, of any alternative approach.

In using the term "unconscious" we disclaim anything so disrespectful as an intended reference to that state of replete quiescence which has sometimes been known to settle upon the Bench after the luncheon adjournment. In fact, the metaphor is not so far-fetched as it sounds. Freudian psychology teaches that the source of all mental energy is located in that reservoir of instincts and emotions which it denotes the *unconscious*. It is a healthy symptom to find the instinct of impartiality so deeply rooted in the judicial mind that it automatically and unconsciously colours all mental activity, requiring neither the artificial sublimation of professional competition, nor the censorship-processes of the *ego*, to make it acceptable to the individual or to society at large.

In another sense the unconscious played a part at the recent first brief hearing of the case of *Kirk* v. *Colwyn*, in the Court of Appeal, which had many of the characteristics of an overture. Tuning up for the opening, Mr. Gilbert Beyfus, Q.C., was explaining to the Court that the appellant was an anaesthetist, specializing in dental work, when he was interrupted by the Master of the Rolls pronouncing these memorable words (*The Times*, March 13):

> "I think, Mr. Beyfus, that your client is known to me in that I have slid into unconsciousness under his care. . . . Obviously I cannot deal with the case."

This motive, having (as it were) been stated by the leader of the judicial orchestra, was supported by the instrumentality of Lord Justice Parker, who came in next with the observation:

> "I think I ought to add this—I go to the same dentist as my Lord, but as I usually have 'locals' . . ."

Having thus arrived at the double bar, their Lordships heard a vigorous passage, in contrary motion, introduced by Lord Justice Sellers, declaring:

> "I am free from any taint."

Nothing daunted by this piece of *bravura*, the Master of the Rolls, restating his opening theme in the dominant, remarked:

> "I may have to be lulled into unconsciousness again";

whereupon the appellant's counsel rounded off the episode with the graceful *coda*:

> "My arguments often have that effect."

After some discussion with counsel for the respondent, it was decided that the appeal should be heard by a differently constituted Court, presided over by Lord Justice Hodson.

Thus is illustrated the remark of Samuel Butler, the author of *Erewhon*, to the effect that "the most perfect humour and irony is generally quite unconscious"; thus also is thrown into relief, by this landmark in the law, the quotation with which this column began.

A.L.P.

NOTICES

The next court of quarter sessions for the Isle of Ely will be held on Monday, April 9, 1958, at the Sessions House, Ely, commencing at 11.0 *a.m.*

The next court of quarter sessions for the county of Cambridge will be held on Friday, April 11, 1958, at The Guildhall, Cambridge, commencing at 10.30 *a.m.*

The next court of quarter sessions for the county of Cheshire will be held on Wednesday, April 9, 1958, at The Sessions House, Knutsford, with the adjourned sessions on Monday, April 14, 1958, at The Castle, Chester.

The next court of quarter sessions for the city of Coventry will be held on Thursday, April 10, 1958, at the County Hall, Coventry, commencing at 11 *a.m.*

The next court of quarter sessions for the borough of Newark will be held on Thursday, April 10, 1958, at 10.30 *a.m.*, with the adjourned sessions on Friday, April 11.

The next court of quarter sessions for the county of Cardiganshire will be held on Thursday, April 10, 1958, at the Town Hall, Lampeter.

PRACTICAL POINTS

All questions for consideration should be addressed to "The Publishers of the Justice of the Peace and Local Government Review, Little London, Chichester, Sussex." The questions of yearly and half-yearly subscribers only are answerable in the Journal. The name and address of the subscriber must accompany each communication. All communications must be typewritten or written on one side of the paper only, and should be in duplicate.

1.—Building—*Occupation of non-residential building before completion.*

An owner has partly constructed a garage that complies, so far as it has been built, with approved plans, and has started using it, but is dilatory about completing it. Have the council any public health powers to enforce completion? Would the position be any different if he had not started using it?

ENYLO.

Answer.

If he had not started, s. 66 of the Public Health Act, 1936, would apply, though it would not directly compel him to start. Now that he has started, he is not compelled to finish: we assume there is nothing to justify invoking s. 58 of the Act.

2.—Criminal Law—*Retaining part of employer's money with connivance of employer—Is this embezzlement?*

I should appreciate your opinion whether the following circumstances amount to embezzlement.

At the termination of each day an omnibus conductor locks up (in an otherwise empty safe on his employer's premises) his ticket-issuing apparatus, waybills, and some but not all of the money which he has received as fares during the day. At the commencement of the following day these are unlocked by the conductor and handed in at the office where the accounting is done.

The ticket-issuing apparatus both prints the tickets and records those issued, and the waybill is a record, maintained by the conductor, of tickets sold during the day.

The conductor keeps some of the money for his own use (without necessarily knowing exactly how much), but does not tamper with the ticket apparatus or falsify the waybill. Certain other conductors have a similar habit, and if challenged they would no doubt say that they had merely borrowed the money.

The accounting staff, in the course of preparing the accounts, ascertain how much the deficiency is, and this amount is deducted from the conductor's wage the following week-end. The conductor could no doubt make the same calculation if he so wished.

The case, for example, of *R.* v. *Hodgson* (1828) 3 C. & P. 422 appears to decide that if the money received is accounted for and not denied, the fact of not paying it over without some evidence of fraudulent intent is not sufficient proof of the felony of embezzlement.

In these circumstances, is the bus conductor guilty of embezzlement and, if so, how can the fraudulent intent be specifically proved if it cannot be taken to be implied in the bus conductor's action?

If the circumstances do not amount to embezzlement, is the conductor guilty of any other crime?

H. CASH BAG.

Answer.

Although the facts disclose a remarkable system of accounting, we do not think they can amount to embezzlement or, indeed, to any other offence. The element of fraudulent intent necessary to establish embezzlement seems to be absent. Mere failure to pay money to the master is not by itself enough to establish embezzlement (*R.* v. *Hodgson, supra*). It is embezzlement where it is the servant's duty to account for and pay over money received by him at stated times and he does not do so, although admitting receipt of the money (*R.* v. *Jackson* (1844) 1 C. & K. 384), but in this particular case it can hardly be said that the conductor is required to pay over the money at stated times if the accounting staff, presumably with the employer's approval, adjust the account at the week-end.

3.—Land—*Compulsory acquisition of leasehold—Freehold vested in acquiring authority—Notice of entry—Liability to pay ground rent.*

In carrying out their slum clearance programme, it is my council's normal practice, having declared a clearance area, to make a compulsory purchase order, and the following situation often arises. The council may already own the freehold interest in a particular property, and be receiving an annual ground rent from a leaseholder, who has usually let the property to a weekly tenant. After service of a notice to treat but before actual completion of the purchase, the council are able to provide the occupier with alternative accommodation, and do so after service of a 14-day notice of entry. The property is then rendered uninhabitable by the council and eventually demolished.

It is often several months before the purchase is completed, and the leaseholder receives his compensation, and the point over which I am having difficulty is whether, after the council have lawfully taken possession, the leaseholder is obliged to continue to pay ground rent to the council. One argument is that, having deprived the leaseholder of his right to enjoy the property and receive a rent, the council can hardly continue to demand a ground rent from him. It is appreciated that from the date of taking possession the leaseholder is entitled to interest on his compensation money up to the date of completion of the purchase, but it is considered that the interest is awarded solely to compensate the leaseholder for the delay in receiving his purchase money. Again, the leaseholder's tenant, unless he wishes otherwise, is accommodated in a council property and pays rent to the council.

The opposite argument is that, notwithstanding the taking of possession, the lease subsists until the actual completion of the purchase and therefore the ground rent remains payable until that date.

P. MEW.

Answer.

After the service of the notice to treat the leaseholder is entitled to the purchase money or compensation for the value of his interest as at the date of the notice to treat. He may continue to enjoy his property and act as owner, subject only to the limitation that he must not increase the burden of compensation payable by the acquiring authority. No interest is payable while the leaseholder thus enjoys his interest. When, however, the acquiring authority enters on the interest of the leaseholder and deprives him of the benefit of his lease, interest is payable from that date as to an unpaid vendor and the lessee ceases to be liable for outgoings. No further ground rent is payable, therefore, after entry.

4.—Licensing—*On-licence holder carrying on business of "off" sales only—Considerations.*

The owners of a public house with a full on-licence have closed part of the premises but have continued their off-licence trade, the two businesses of "on" and "off" trade having always been run separately although under the same roof. The on-licence holder will apply for the renewal of his licence in the ordinary way but it is realized that the justices or the police may ask for information as to the future use of the premises or might even refuse to renew the licence on the grounds that the premises are not being used as a public house or refer the matter to the compensation authority on the ground of redundancy.

1. Are we right in assuming that the justices may refuse to renew the licence without giving any prior notice to the licensee (s. 11, Licensing Act, 1953)?

2. Would the licensee be well advised to make inquiries of the clerk to the justices to ascertain if the justices are likely to require information as to the future use of the premises?

3. The chief concern of the licensee is to be able to carry on the off-licence business but so long as the on-licence is renewed is there any good reason for applying for an off-licence and surrendering the on-licence?

4. (*a*) We presume that the register kept by the clerk to the justices will show if the licence is an old on-licence as being in force on August 15, 1904, as the licensee does not know?

(*b*) If it is an old on-licence and does not come within s. 14 of the said Act are we right in assuming that the justices can only refer the licence to the compensation authority if they refuse to renew the licence on the ground that the on-licence is not being used?

OSOR.

Answer.

1. Renewal of the licence may not be refused except in conditions that the licence-holder has been given notice of the grounds of opposition (Licensing Act, 1953, s. 11 (3)).

2. We think it unnecessary to anticipate the justices' requirements in this regard.

3. The "good reason" that occurs to us immediately is that if the existing on-licence were surrendered on the grant of a new off-licence the situation would be more regular, and the licence-holder would have a security which, as appears from the question, he does not enjoy at present.

4. (*a*) The register of licences will disclose if the licence is an "old" on-licence.

(*b*) If the licence is an old on-licence it must come within the provisions of s. 14 of the Licensing Act, 1953, and, if none of the four grounds of refusal mentioned in subs. (4) is applicable, renewal may not be refused by the licensing justices. If, however, the licensing justices are of opinion that the on-licence is no longer required, they may refer the question of renewal to the compensation authority.

5.—Magistrates—*Jurisdiction and powers—Magistrates' Courts Act, 1957—No notice of plea of guilty returned—Proof of service.*

A is summoned and is served with the new procedure forms under the Magistrates' Courts Act, 1957. He does not return form No. 4 (Notice of Plea of Guilty) to the clerk, nor does he attend the court hearing.

A certificate of service is endorsed on the summons signed by constable X showing that it was served by leaving it with A's wife. In these circumstances it is not possible to proceed unless the prosecution can prove that the summons came to his knowledge. This difficulty can be overcome if constable X makes a solemn declaration before a justice of the peace, etc., as mentioned in para. 55 (1), Magistrates' Courts Rules, 1952. X is in court when the summons is called, could he then and there make this solemn declaration before one of the adjudicating justices and so enable the justices to deal with the case?

HESTLER.

Answer.

The declaration mentioned in r. 55 (1) of the Magistrates' Courts Rules, 1952, clearly refers to a situation where the officer who served the summons is not present at the hearing. In the present case, the constable X can give evidence on oath and, if his evidence is that the summons came to the defendant's knowledge, the court can then deal with the case.

6.—Magistrates—*Magistrates' Courts Act, 1957—No notice of plea of guilty returned—Proof of service—Magistrates' Courts Rules, 1952, rr. 55 and 76.*

I am not sure that I follow the answer above. It may be that I misunderstand r. 55 (1) of the Magistrates' Courts Rules, 1952. In the first place it is clear from r. 76 that unless a summons is served by delivering it to the person to whom it is directed and endorsed to that effect, the case cannot proceed until it is proved that the summons came to the accused's knowledge, but r. 55 (1) says that proof of service will be accepted by a solemn declaration in the prescribed form of the person by whom the summons was served. If therefore in the case stated constable X makes a declaration in the appropriate form declaring that the summons was served on A by leaving it with his wife, it seems there is no further need for it to be proved that the summons came to A's knowledge.

I am thinking of the case where constable X serves the summons by leaving it with A's wife and merely endorses the summons with a certificate to that effect. A does not turn up at the hearing. Had X made a declaration before a magistrate as provided for in r. 55 (1) the case could have proceeded, but because it is merely endorsed by constable X with a certificate of service on A's wife it requires proof that the summons came to A's knowledge. Constable X is in court when the case is called on. He cannot go into the box and give evidence on oath that the summons came to A's knowledge because he does not know what A's wife did with it.

Can constable X in court make the prescribed declaration before one of the adjudicating magistrates and thus enable the case to be proceeded with?

HESTLER AGAIN.

We do not agree with our correspondent's contention that, if the constable makes a statutory declaration that the summons was left with the defendant's wife, there is no further need for proof that it came to his knowledge. Our correspondent attributes to a statutory declaration a potency which it does not possess. A declaration under r. 55 (1) of the Magistrates' Courts Rules, 1952, is an alternative to the certificate under r 55 (2) in the matter of proving service of a summons. In this particular instance, both would have to recite that the summons was left with the defendant's wife at the defendant's usual place of abode, and, by r. 76 (2), as amended by r. 3 of the Magistrates' Courts Rules, 1957, such service is not to be treated as proved unless it is proved that the summons came to the defendant's knowledge.

We had assumed, from the wording of our correspondent's first question, that the constable was able to add something which would show that the summons had come to the defendant's knowledge, *e.g.*, that he had spoken to the defendant since leaving the summons and that the latter had made some reference to it.

7.—Rating and Valuation—*Recovery of rates—Unadministered estate.*

The owner-occupier of a house died some time ago, and there are relatives who appear to be entitled to succeed to the property. None of them, however, appears to be willing to take any action to have the estate administered. At the time of the death no rates were owing, but rates have accrued since the death as the locked house is full of furniture. Can you suggest any method of expediting settlement of the rates accruing? It appears likely that the amount of rates due now exceeds the value of the furniture in the house, but the house itself is of substantial value.

ANSAY.

Answer.

We infer that the ratepayer died intestate. The property is now vested in the President of the Probate, Divorce and Admiralty Division. It might be worth while to communicate with the Senior Registrar, explaining the present position, but there is no practical method of enforcing payment: *see* a more detailed answer at 119 J.P.N. 140, and a P.P. similar to this at 120 J.P.N. 338.

8.—Rent Act, 1957—*Certificates of disrepair—Entry by council's officials.*

What authority exists for the council's officers to enter private dwellings to inspect them, in connexion with the issue and cancellation of certificates of disrepair under the Rent Act, 1957?

POCKOR.

Answer.

The Act does not give a power of entry. As the certificate is for the benefit of the tenant it can be assumed that he will grant entry. We suppose he might put obstacles in the way of inspection when cancellation of the certificate was impending, but it seems unlikely to happen in practice.

9.—Road Traffic Acts—*Weight of vehicle—Evidence—Weight ascertained after request by inspector who failed to produce his authority—Admissibility.*

Section 27 (1) of the Road Traffic Act, 1930, enacts . . . "it shall be lawful for any person authorized by a highway authority . . . on production of his authority, to require the person in charge of any motor vehicle to allow the vehicle . . . to be weighed . . . and for that purpose to proceed to a weighbridge . . . and if any person in charge of a motor vehicle refuses or neglects to comply with any such requirement, he shall be guilty of an offence."

Regulation 68 of the Motor Vehicles (Construction and Use) Regulations, 1955, made under the provisions of the said Act, provides that, in the case of a heavy motor car having four wheels, the sum of the weight transmitted to the road surface by all the wheels shall not exceed 14 *tons*.

A, an inspector of weights and measures who has been authorized by the highway authority to require the weighing of a motor vehicle as aforesaid and who is not known to B, stops a heavy four-wheeled motor car carrying a load which is being driven by B. A informs B of his identity but does not produce to him his authority to require the weighing of the vehicle. B, at A's request, then drives the vehicle to a weighbridge, where it is weighed by A, and the gross weight is found to exceed that permitted by reg. 68. B is now charged by A with a contravention of reg. 68.

Your opinion would be appreciated as to whether the evidence of A as to the weighing of the vehicle by him on the weighbridge and the result of such weighing is admissible against B, inasmuch as A did not produce to B the authority granted to him by the highway authority.

J.T.P.E.

Answer.

A's failure to produce his authority could be put forward as a defence to a charge under s. 27 (1), *supra*, of failing to comply with the inspector's requirement, but when B has complied and the vehicle has been duly weighed the result of the weighing is, in our view, clearly admissible on a charge under reg. 68, *supra*.

As to the admissibility of evidence irregularly obtained *see Kuruma Son of Kaniu* v. *R.* [1955] 1 All E.R. 236; 119 J.P. 157.

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